DATUK BANDAR KUALA LUMPUR v. HO POH SIM

HIGH COURT MALAYA, KUALA LUMPUR
SM KOMATHY SUPPIAH JC
[ORIGINATING SUMMONS NO: 24FC-560-04-2014]
28 JANUARY 2015

LOCAL GOVERNMENT: *Rates – Arrears of assessment – Order for sale – Application for – Whether procedures under s. 148 Local Government Act 1976 complied with – Premise found to be locked, vacant and unoccupied – Failure to issue Form G as mandated in s. 148 Local Government Act 1976 – Whether fatal to application under s. 151 – Whether evidence adduced to establish that premise was vacant and unoccupied – Whether application allowed*

The plaintiff applied for an order for sale of the defendant's apartment under s. 151 of the Local Government Act 1976 ('the Act') on the ground that the defendant had failed to pay the outstanding assessment charges for the sum of RM3,057. Pursuant to s. 148 of the Act, the plaintiff issued a warrant of attachment in Form F which was served on the defendant by posting it at his premises since it was found to be locked. However, no attachment was done and consequently, no inventory list or Form G was issued to the defendant since it was found that the property was vacant and unoccupied. The issue that arose for consideration was whether the plaintiff's failure to issue Form G to the defendant as mandated in s. 148 of the Act was fatal to the plaintiff's application under s. 151.

Held (dismissing application):

(1) Sections 148 and 151 of the Act must be strictly construed because they deprive a person of his property and art. 13(1) of the Federal Constitution states that no person shall be deprived of property save in accordance with law. The procedure for the recovery of unpaid assessment is provided in s. 148 of the Act. Where recovery by attachment and sale is not possible in cases where the property is vacant or unoccupied or that the value of the movable property to be attached is of a lesser value than the arrears to be recovered, the plaintiff is empowered to apply for an order for sale under s. 151. However, an order for sale under s. 151 may be applied for only if the mandatory steps as set out in s. 148 has been complied with (*Ke Ka Tong Sdn Bhd v. Datuk Bandar Kuala Lumpur*; refd). (paras 7, 8, 10, 11 & 17)

(2) There was no legal obligation on the plaintiff to issue Form G where the property was vacant and unoccupied. It was, however, necessary for the plaintiff to satisfy the court that the property was in fact vacant and unoccupied. On the facts, no evidence was adduced to establish that the premises was vacant and unoccupied. If the apartment was merely locked, it was not clear how the officer in question had gained access to the unit to conclude that it was vacant and unoccupied. (paras 15 & 16)

A **(3)** It was incumbent on the plaintiff to establish by reliable evidence that it had complied with s. 148 of the Act and why the remedy of attachment and sale was not invoked. On the facts, the plaintiff could have exhibited photographs to show that the apartment was indeed vacant and unoccupied. If the property was locked, the officer in
B question should have broken into the apartment to effect the attachment. As such, there was nothing to satisfy the court that the remedy of attachment and sale was not available. (paras 16 & 17)

Case(s) referred to:
Ke Ka Tong Sdn Bhd v. Datuk Bandar Kuala Lumpur [2008] 2 CLJ 225 CA ***(refd)***

C **Legislation referred to:**
Federal Constitution, art. 13(1)
Local Government Act 1976, ss. 148(2), 151

For the plaintiff - PK Yong; M/s PK Yong & Co
For the defendant - Not Represented

D

Reported by Kumitha Abd Majid

JUDGMENT

SM Komathy Suppiah JC:

E

[1] By an originating summons dated 29 April 2014, the plaintiff, Datuk Bandar Kuala Lumpur, applied for an order for sale of the defendant's apartment bearing postal address Lot No. 36456, Mukim PTG, 7-3A-1, Blok 7, Jln 3A/155, Bukit OUG Condominium, 58200 Kuala Lumpur. The application is made under s. 151 of the Local Government Act 1976
F ("LGA") on the ground that the defendant had failed to pay outstanding assessment charges amounting to RM3,057.

The Facts

[2] Pursuant to s. 148 of the LGA, the plaintiff issued a notice dated
G 14 March 2012 in Form E to the defendant requiring him to settle outstanding arrears of assessment quantified as RM3,057 within 15 days. The notice was served on him by posting it on his apartment because it was found to be locked and personal service could not be effected. Despite the notice, no payment was made by the defendant.

H **[3]** Consequently on 2 May 2012, the plaintiff issued a warrant of attachment in Form F which was again served on the defendant by posting at his premises as it was again found to be locked. Form F authorised the plaintiff's officers to seize the defendant's movable property in his apartment to settle the outstanding arrears.

I **[4]** However, no attachment was done and consequently no inventory list or Form G was issued to the defendant.

[5] On 6 June 2012, the plaintiff issued Form H and affixed it to a conspicuous part of the defendant premises as required by s. 148(2). Form H stated that an application for an order for sale of his apartment will be filed under s. 151 of the LGA unless the arrears outstanding was paid within seven days.

[6] The defendant did not pay the arrears and the present application was filed in April 2014 for an order for sale of his apartment.

The Law

[7] The procedure for the recovery of unpaid assessment is provided in s. 148 of the LGA which provides:

> (1) For the recovery of an arrear the local authority may issue a warrant of attachment in Form F of the First Schedule hereto and may seize by virtue thereof any movable property, belonging to the owner or occupier liable to pay the same, which is found within the local authority area and may also seize any movable property, to whomsoever belonging, which is found on the holding in respect of which the arrear is due:
>
> Provided that no warrant of attachment shall be issued by the local authority unless it has served a notice, in Form E of the First Schedule hereto, posted or delivered to the owner or any one of the owners, if more than one, at the last known address, calling on him to pay the arrear within fifteen days of the posting or delivery.
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> (2) The warrant shall be executed by an officer of the local authority who shall make an inventory of the property attached there under, and shall at the same time give notice in Form G of the First Schedule hereto, to the person in possession of the property at the time of attachment:
>
> Provided that where in the opinion of the officer executing the warrant the value of the movable property to be attached is of a lesser value than the arrear to be recovered or there is no movable property to be attached as in the case of a holding which is vacant or unoccupied no such inventory need be made and in such a case he shall affix a notice in Form H of the First Schedule hereto on some conspicuous part of the holding or any one of the holdings in respect of which the arrear is due to the effect that procedure for the recovery shall be instituted under section 151.
>
> (3) Such officer may break open in the daytime any house or building for the purpose of effecting such attachment.
>
> (4) The fee for a warrant of attachment shall be of such amount as the local authority may fix from time to time and shall be costs of the attachment.

A **[8]** It is clear from s. 148 that where recovery by attachment and sale is not possible in cases where the property is vacant or unoccupied or that the value of the movable property to be attached is of a lesser value than the arrear to be recovered, the plaintiff is empowered to apply for an order for sale under s. 151.

B **[9]** Section 151 reads:

> (1) If the arrear cannot be recovered in the manner provided in section 148 it shall be lawful for the Registrar of the High Court upon application made by the local authority, or by any officer of the local authority authorized by the local authority in that behalf, to order
C the attachment and sale of the holding or holdings in respect of which the arrear has accrued.
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> (2) Such attachment and sale may be effected in the manner provided by the law relating to civil procedure for the execution of a decree by attachment and sale of immovable property.
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D (3) The Registrar of the High Court shall, from the proceeds of sale, provide first for the costs of attachment and sale, then for payment to the local authority of the amount of the arrear, together with interest thereon at the rate of six per centum per annum and costs, and in the event of there being any surplus remaining the Registrar
E shall, if he is satisfied as to the right of any person claiming such surplus, pay the amount thereof to him, and if he is not so satisfied, shall place the amount on deposit in the Treasury to be held in trust for the person who may ultimately succeed in establishing his claim thereto.
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F (4) The local authority may in its discretion refrain from seizing and selling, or may release from attachment, any property lawfully seizable under section 148 where such property is the property of the occupier, being a tenant, of the holding or of a person not liable to pay an arrear due in respect of such holding.
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G (5) Where the property is the property of a tenant-occupier, the local authority shall refrain from seizing and selling or shall release from attachment such property:
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> Provided that the tenant-occupier pays to the local authority the rent of such holding as it falls due until the arrear is satisfied or until the termination of his tenancy and in any such case,
H notwithstanding anything contained in subsection (1), such holding may be attached and sold.
>
> (6) The amount of any rent paid by a tenant-occupier to the local authority under subsection (5) may be deducted by such tenant-occupier from the next and following payments of rent to the owner of the holding.
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[10] In *Ke Ka Tong Sdn Bhd v. Datuk Bandar Kuala Lumpur* [2008] 2 CLJ 225; [2008] 3 MLJ 234, the Court of Appeal had occasion to consider the legal effect of ss. 148 and 151 of the LGA. Richard Malanjum JCA enunciated the law as follows (at paras. 10 to 13):

> However, the opening words of s. 151 makes it imperative to find that it is the intention of the Legislature to require the local authority to first exhaust the mechanisms as provided in s. 148 for the recovery of arrears outstanding due to it. The opening words read:
>
> > If the arrear cannot be recovered in the manner provided in s. 148 it shall be lawful for the registrar of the High Court upon application made by the local authority ...
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> In other words it is for the local authority to show that it has exhausted all the mechanisms as provided for in s 148 including the service of Form H given under the proviso of sub-s. (2) of s. 148 when making an application under s. 151.
>
> Contrary to what was contended before us we do not think s. 148 or s. 151 imposes upon the appellant or debtors of the local authority the duty to ensure that the local authority has done all that is required to be done under s. 148.
>
> Meanwhile, we are not saying that the local authority is not entitled to rely on other avenues to recover the arrears other than s. 148. That explains the use of the word 'may' in s. 148. However, if it is inclined to rely on s. 151 then the provisions of s. 148 must be first observed. With respect we think the learned High Court judge erred when she ruled that s. 148 did not apply in this case.

[11] The above judgment illustrates that an order for sale under s. 151 may be applied for only if it has complied with the mandatory steps set out in s. 148.

The Issue

[12] The only issue in these proceedings is whether the plaintiff's failure to issue Form G to the defendant as mandated in s. 148 is fatal to the plaintiff's application under s. 151.

Submission

[13] Counsel for the plaintiff contended that the plaintiff has complied with the mandatory procedure laid down in s. 148. It was accepted that Form G was not issued. In this connection, the court was referred to the assertion in para. 7 of the affidavit in support which provided:

> Plaintiff tidak mengeluarkan Borang G (Inventori bagi harta alih yang ditahan) di bawah Seksyen 148 Akta Kerajaan Tempatan kerana tiada apa-apa harta alih yang hendak ditahan berikutan pegangan tersebut kosong dan tidak diduduki. Maka, menurut proviso kepada seksyen

148(2) Akta Kerajaan Tempatan, tiada inventori perlu dibuat dan dalam hal yang demikian ini, saya telah mengeluarkan dan menampal Borang H setelah mendapati bahawa pegangan hartanah milik Defendan tersebut adalah berkunci, kosong dan tidak berpenghuni ('vacant and unoccupied').

[14] Counsel for the plaintiff pointed out that it is expressly provided in s. 148 of the LGA that Form G need not be issued in a case where the property in question was vacant and unoccupied. As the defendant's apartment was vacant and unoccupied, it was not incumbent on the plaintiff to issue Form G.

Analysis

[15] I accept the submission that there is no legal obligation on the plaintiff to issue Form G where the property in question is vacant and unoccupied. It is therefore necessary for the plaintiff to satisfy the court that the property was in fact vacant and unoccupied.

[16] I pause here to observe that no evidence was adduced in para. 7 to establish that the premises was vacant and unoccupied. If the apartment was merely locked as mentioned in the affidavit, it is not clear how the officer in question gained access to the unit to conclude that it was vacant and unoccupied. The plaintiff could have exhibited photographs to show that the apartment was indeed vacant and unoccupied as alleged. Were there other reasons for the plaintiff to arrive at this conclusion? None were stated to satisfy the court that the remedy of attachment and sale was not available in the instant case.

[17] In the absence of reasons for the averment that the apartment was vacant and unoccupied, this court cannot rely on the bare *ipse dixit* of the plaintiff and hold that the strict requirements of s. 148 have been complied with. If the property was locked, the plaintiff should have broken into the apartment to effect the attachment as it is empowered to do so. It must also be remembered that ss. 148 and 151 of the LGA must be strictly construed because they deprive a person of his property and art. 13 (1) of the Federal Constitution under part (II) Fundamental Liberties clearly states that no person shall be deprived of property save in accordance with law. In the circumstance, it is incumbent on the plaintiff to establish by reliable evidence that it has complied with s. 148 and why the remedy of attachment and sale was not invoked.

[18] In the result, the application is dismissed.